

E-Filed 2/6/09

NOT FOR CITATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DAISY QUESADA,

Plaintiff,

V.

NDEX WEST, LLC, et al.,

Defendants.

Case Number C 08-5668 JF (HRL)

ORDER VACATING MOTION TO
DISMISS AS MOOT

[re: doc. no. 5]

Plaintiff filed the complaint in the instant action on October 29, 2008 in the Santa Clara Superior Court. Defendants removed the action on December 18, 2008, and filed a motion to dismiss on December 29, 2008. Plaintiff filed an amended complaint on January 30, 2009.

Pursuant to Federal Rule of Civil Procedure 15(a), “[a] party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served.” A motion to dismiss does not constitute a responsive pleading within the meaning of Rule 15(a); Plaintiff thus does not need leave of court to file an amended complaint. *See Crum v. Circus Circus Enterprises*, 231 F.3d 1129, 1130 n.3 (9th Cir. 2000). Accordingly, the pending motion to dismiss will be vacated as moot.

ORDER

Defendants' motion to dismiss filed December 29, 2008 is VACATED AS MOOT.

DATED: 2/6/09

JEREMY FOGEL
United States District Judge

1 This Order was served on the following persons:

2

3 John M. Sorich jsorich@adorno.com

4 Reuben Lagbao Nocos rlnocos@nocoslaw.com

5 Sung-Min Christopher Yoo cyoo@adorno.com, vdelgado@asands.com

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28